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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/765,287	09/12/1997	CAMILLE LOCHT	960-25	5876

23117 7590 04/22/2003

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EXAMINER

SHAHNAN SHAH, KHATOL S

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/22/2003

37

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

08/765,287

Applicant(s)

LOCHT ET AL.

Examiner

Khatol S Shahnan-Shah

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 12/13/2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-15, 18-22, 27-30, 34, 35, 37, 39 and 40.

Claim(s) withdrawn from consideration: 36 and 38.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 16111

Attachment to Advisory Action

1. Applicants' notice of appeal, received December 12, 2002, paper 11 is acknowledged.
2. Applicants' amendment G and Reply to a final office action under 37 CFR 1.116, received March 13, 2003, paper 36 is acknowledged. Claims 1, 7, 34 and 40 were amended. New Claim 42 was added.

The proposed amendments will not be entered because they raise new issues that would require further consideration and/or search for the following reasons:

Amended claim 1 requires both new search and new rejection because of the added new limitation "encoding an immunogenic fusion protein " and deletion of the limitation of " said sequence (2), when placed under the control of a promoter recognized by the cellular polymerases of *B. pertussis* and introduced into a *B. pertussis* cell culture is expressed in this culture and excreted into the culture medium of these cells or exposed at the surface of these cells, wherein said recombinant DNA when expressed produces highly immunogenic fusion proteins". This deletion now broadens the scope of claim 1 since the sequence is not required to be placed under the control of a promoter recognized by the cellular polymerases of *B. pertussis* and therefore raise new issues under 35 USC 112 requiring further consideration and/or search.

Amended claim 34 requires both new search and new rejection because of deletion of the limitation of " said sequence (2), when placed under the control of a promoter recognized by the cellular polymerases of *B. pertussis* and introduced into a *B. pertussis* cell culture is expressed in this culture and excreted into the culture medium of these cells or exposed at the surface of these cells". This deletion now broadens the scope of claim 34 since the sequence is not required to be

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placed under the control of a promoter recognized by the cellular polymerases of *B. pertussis* and therefore raise new issues under 35 USC 112 requiring further consideration and/or search.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahnan-Shah whose telephone number is (703) 308-8896. The examiner can normally be reached from 7:30 AM - 4 PM on Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith, can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned to is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Khatol Shahnan-Shah, BS, Pharm, MS



Biotechnology Patent Examiner

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April 8, 2003